**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.3049 OF 2007

Ramesh s/o Tukaram Raikwar,
Aged about 55 years,
Occu.: Doctor,
R/o Jaistambha Chowk, Paratwada,
Tah. Achalpur,
District Amravati. ... Petitioner

Versus

1. State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.

2. Committee for Scrutiny and
Verification of Tribe Claim,
Amravati Division, Amravati,
through its Deputy Director (R.)
and Member-Secretary,
having its office at Irwin Chowk,
Amravati.

3. The Sub-Divisional Officer,
Achalpur,
(Returning/Election Officer),
Municipal Council,
Achalpur.

4. The Collector, Amravati,
(Election Division).

5. Chief Officer,
Municipal Council,
Achalpur, Taluka Achalpur,
District Amravati. ... Respondents

Shri P.C. Madkholkar, Advocate for Petitioner.
Shri V.A. Thakre, AGP for Respondents No.1, 3 and 4.
Shri S.M. Puranik, Advocate for Respondent No.2.

Coram : A.H. Joshi & R.C. Chavan, JJ.
Dated : 31st August, 2007

ORAL ORDER (Per R.C. Chavan, J.) :

1. The petitioner claimed to belong to Halba (Scheduled Tribe) and on that basis was in the employment of the State as a Medical Officer against a post reserved for Scheduled Tribe. He had secured this employment on the basis of the validity certificate issued by respondent No.2 Caste Scrutiny Committee on 12-8-1994. This certificate was issued subject to decision of the Supreme Court in Special Leave Petition No.16372 of 1986. The petitioner was shown as belonging to Halba-Koshti in this certificate. According to the petitioner, he objected to reference to Koshti in the certificate, but in vain. After the decision in State of Maharashtra v. Milind Katware, reported in (2001) 1 SCC 4, the petitioner issued a notice to the Committee on 19-1-2001 to recall the decision of the Committee dated 12-8-1994. The caste claim of the petitioner was, therefore, verified again and was invalidated by order dated 27-1-2003. The petitioner approached

this Court by filing Writ Petition No.5355 of 2006. This Court, by judgment dated 7-3-2007, set aside the Committee's order and directed the Committee to decide the caste claim afresh within a period of three months.

2. In the proceedings upon remand, the Vigilance Cell of the Committee again conducted an enquiry and fresh report of the Vigilance Cell was supplied to the petitioner. The petitioner had been elected as Municipal Councillor on a seat reserved for Scheduled Tribe. In the proceedings before the Committee, the defeated candidate was permitted to intervene. The petitioner sought leave to cross-examine the officers of the Vigilance Cell. This request was rejected. The petitioner, therefore, again approached this Court by filing Writ Petition No.2341 of 2007, which was dismissed on 14-6-2007. By its order dated 30-6-2007, the Committee again invalidated the petitioner's caste claim. Consequently, the petitioner's election as a Municipal Councillor was held invalid by the Collector, upon whose orders the Chief Officer of the Municipal Council passed an order unseating the petitioner. The petitioner has consequently approached this Court with a prayer to set aside the order of the

Caste Scrutiny Committee dated 30-6-2007, the order of the Collector dated 4-7-2007, and the order of the Chief Officer of the Municipal Council dated 6-7-2007, unseating the petitioner, on several grounds.

3. We have heard Shri P.C. Madkholkar, learned Advocate for the petitioner, Shri V.A. Thakre, learned AGP for respondents No.1, 3 and 4, and Shri S.M. Puranik, the learned Advocate for respondent No.2.

4. The first contention of the petitioner is that he had a right to cross-examine the officers of the Vigilance Cell, who submitted a report against him. Denial of this right has prejudiced him in the proceedings before the Committee. Though there is no doubt that the proceedings before the Committee are akin to the proceedings in a suit before a Civil Court, it does not follow that the claimant would have a right to cross-examine the officers of the Vigilance Cell, unless the officers step into the witness box and tender evidence before the Committee - orally or in the form of an affidavit. Officers of the Vigilance Cell only collect evidence and submit a report before

the Committee. Their role is akin to that of an Investigating Officer in a criminal trial. What they state is not evidence in itself to prove the facts under investigation by the Committee. Therefore, first, because the officers of the Vigilance had not appeared as witnesses or had filed an affidavit before the Committee, and secondly, because the officers merely collected evidence and their activity itself did not amount to evidence of facts being probed by the Committee, the Committee rightly rejected the petitioner's prayer for cross-examination. We have had an occasion to examine the question of entitlement of the petitioner to cross-examine the officers of the Vigilance Cell in Avinash Tulshiram Limje v. State of Maharashtra and others, reported at 2007(4) Mh.L.J.305, and have held that the petitioner has no such right. The arguments advanced do not persuade us to take a different view.

5. The learned Advocate for the petitioner next submitted that the Committee erred in permitting a candidate defeated at the Municipal elections to intervene in the proceedings before the Committee. He submitted that the remedy of defeated candidate lay in filing an election petition and he should not have

been allowed to participate in the proceedings. There can be no doubt that a defeated candidate would have remedy of preferring an election petition, where too the question of validity of petitioner's caste claim would have cropped up. It does not, however, follow that such a candidate is disentitled from approaching the Committee. A claimant of caste certificate has the burden to prove before the Committee that he is entitled to the status which he claimed. The Committee would be justified in looking into the material, which may be tendered to rebut the petitioner's claim, with one rider, namely, that such material would have to be brought to the notice of the petitioner in order to give him a chance to show as to how the material was irrelevant or unreliable. In this case, the proceedings before the Committee, as depicted in the order, show that whatever the material the intervenor had sought to tender before the Committee was provided to the petitioner and the petitioner was given a chance to rebut the same. In view of this, it cannot be said that the petitioner was prejudiced by the Committee permitting the defeated candidate at the Municipal elections to intervene in the proceedings.

6. On behalf of the petitioner, the decision of the Committee was assailed on the ground that his status as belonging to Scheduled Tribe could not have been disturbed by the Committee in view of the judgment of the Supreme Court in Milind Katware's case, referred to above. The petitioner has quoted the following observations of the Supreme Court in para 15B of the petition, which are as under :

> *"Having regard to the passage of time in the given circumstances, including interim orders passed by this Court in SLP (c) No.16372/1985 and other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment."*

The learned Advocate for the petitioner submitted that the Supreme Court in a recent judgment in Punjab National Bank and another v. Vilas s/o Govindrao Bokade and another, reported at 2007(3) Mh.L.J. 805, has reiterated this position. The learned Advocate for the petitioner further submitted that a Division Bench of this Court in Writ Petition No.5874 of 2002 (Premanand Janardan Raiwar v. State of Maharashtra), decided on 25-4-2006, had held in para 2 of the judgment as follows :

> *" The para 3 of the order at page 30 clearly states that the petitioner belongs to Scheduled Tribe. Whatever happens to the judgment in W.P. 2944/84*

> *the finding that the petitioner belongs to Scheduled Tribe cannot be touched. Hence petition is disposed of."*

The learned Advocate for the petitioner submitted that in view of this legal position, it was impermissible for the Committee to conclude that the petitioner was not entitled to protection of his status as belonging to Scheduled Tribe.

7. It was submitted on behalf of the respondents that these contentions are thoroughly misconceived. First, the observations of the Supreme Court in Milind Katware's case do not help the petitioner, since only admissions and appointments, which had become final, were to be left unaffected. In the present case, there is no question of admission or appointment. Therefore, the protection to "admissions and appointments" cannot be extended to protection of status, which itself was accorded to the petitioner by certificate dated 12-8-1994 subject to decision of the Supreme Court in Special Leave Petition No.16372 of 1986. Since this certificate itself was contingent, after the loss of status of belonging to a tribe included in the Scheduled Tribes, the petitioner could not continue to claim that he belongs to

Scheduled Tribe.

8. As regards the judgment of the Division Bench of this Court in Writ Petition No.5874 of 2002 (Premanand Janardan Raiwar v. State of Maharashtra), decided on 25-4-2006, the learned AGP rightly pointed out that the judgment is just in the form of two-paragraph order and does not disclose all the facts involved. Therefore, it is difficult to find out the context in which the Court made those observations. On a careful consideration of the observations in para 2 of the aforesaid judgment, we are of the view that the Court could not have protected the status of a person as belonging to Scheduled Tribe if he was not shown as belonging to any of the tribes included in the Schedule Tribe Order. Since the petitioner is not shown as belonging to Halba (Scheduled Tribe), but is Halba-Koshti, there is no question of his continuing to have the status of belonging to Scheduled Tribe. It will be ridiculous to hold that though a person does not belong to any of the tribes included in the Scheduled Tribe Order, he still continues to belong to Scheduled Tribe, because he had once been issued a contingent certificate to that effect. Therefore, we uphold the contentions of the learned AGP in this behalf and reject the petitioner's contention that he should have been

accorded a Scheduled Tribe status in view of the observations of the Supreme Court in Milind Katware's case.

9. Reference to judgment of a Division Bench of this Court in Writ Petition No.1658 of 2006 (Nitin Prabhakar v. State) dated 10-8-2007 is equally unhelpful to the petitioner, since the petitioners in that case were shown to have been selected in open category and not on account of their claim as belonging to any reserved category. The observations in the judgment have to be read in this context and, therefore, cannot help the petitioner herein to urge that his claim as belonging to Scheduled Tribe should be upheld.

10. The learned Advocate for the petitioner submitted that the Committee was in error in relying on a judgment of this Court in Writ Petition No.1687 of 2004 (Anand Nilkanth Katole v. The Committee for Scrutiny and Verification of Tribe Claims and others), decided on 5-5-2004, since the Supreme Court had entertained a Special Leave Petition against the said judgment and it has been stayed by the Supreme Court. What has been adopted by the Committee are the reasons which prevailed upon by this Court while deciding Anand Katole's case. So long as

those reasons are not shown to be erroneous, it would be impermissible to prevent an authority from adopting such reasons. What has been observed is that Halbi is also a sub-caste of Koshti caste, just as there is a tribe by the same name Halbi. Therefore, if a person is shown as belonging to Halbi, the question would arise as to whether he belongs to Halbi (Scheduled Tribe) or Halbi, a sub-caste of Koshti caste, and the Committee would be entitled to find as a fact as to whether the petitioner proves his claim as belonging to Halbi (Scheduled Tribe). In other words, a reference to “Halbi” in the documents produced by the petitioner cannot *ipso facto* lead to the inference that he belongs to Halbi (Scheduled Tribe), until it is ruled out that reference is not to Halbi, a sub-caste of Koshti caste.

11. The order of the Committee shows that the Committee had considered the genealogical tree of the petitioner and had considered the documents in relation to petitioner's relatives in the genealogical tree. There are several entries of Koshti as has been observed by the Committee, which would be indicative of the fact that the petitioner belonged to Halbi, a sub-caste of

Koshti caste and not a tribe of the same name included in Scheduled Tribe. Otherwise, a reference to Koshti in the documents of the petitioner's relations is totally inexplicable.

12. The petitioner was also aggrieved by the order of the Committee, because the Committee had placed reliance on a judgment of the Division Bench of this Court in Kishor Khartadkar's case (Writ Petition No.634 of 2000) without making the copy of the judgment available to the petitioner. First, Kishor Khartadkar's case was in relation to claim of a person belonging to caste Thakur (Scheduled Tribe). Since it is a judgment of this Court, it cannot be said that the Committee erred in referring to the said judgment. The petitioner would be entitled to comment upon evidence relating to facts, which may be collected by the Committee, and may have a genuine grievance, if he is prevented from commenting upon such evidence collected. As regards the judgment, it may not be appropriate to expect the Committee to provide copies of the judgments to the parties. In any case, it is not clear as to what erroneous conclusions are drawn by the Committee by referring to the said judgment.

13. The petitioner's contention that his daughter's caste validity is *sub judice*, is of no consequence. As far as the evaluation of the petitioner's claim is concerned, the Committee could not have been expected to wait till the *lis* of the petitioner's daughter's caste validity is decided.

14. The decision of the Committee was also assailed on the ground that the Vigilance Cell Report was prepared by Police Inspector, who has no intimate knowledge of ways of life of tribals and, therefore, is not in accordance with the directions given by the Apex Court in Ku. Madhuri Patil v. Addl. Commissioner, Tribal Development, reported at (1994) 6 SCC 241. When the Vigilance Cell Report is prepared primarily by a Police Officer and is vetted by a Research Officer, the allegation is that the Police Officer was not qualified to undertake the enquiry and when the Research Officer prepares a Vigilance Cell Report, the allegation is that a Police Officer was not associated and, therefore, the report is vitiated. It has to be realized that the Police Officer is a part of the Vigilance Cell, because the Research Officer would not have been able to collect the necessary material or the documents on his own without the help

of the uniform. The evaluation of the material collected is, however, the job of the Research Officer and, therefore, the participation of both the Police Officer in collecting the material and the Research Officer in evaluating the same is necessary. In this case, it is not shown that the Research Officer was not associated with evaluation of material as a part of the Vigilance Cell.

15. To sum up, the petitioner has not been able to make out a case for interference in exercise of writ jurisdiction, since the order passed by the Caste Scrutiny is proper and is based on the material tendered before the Committee. It was principally the petitioner's responsibility under Section 8 of the Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and verification of) Caste Certificate Act, 2000, to discharge the burden of proving that he belongs to Halba (Scheduled Tribe), which he has failed to discharge. The petitioner's disqualification from continuing as Member of the Muncipal Council is automatic in view of the provisions of sub-section (4) of Section 10 of the said Act. Therefore, no fault can be found with the action of the Collector

or the Chief Officer of the Municipal Council, which has been impugned in the petition.

16. In view of this, we see no merit in the petition and dismiss the same.

Judge **Judge.**

Pdl.